

P-3007/NA-89-76 ORDER AFTER RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
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In the Matter of the Minnesota
Independent Equal Access
Corporation's Application for a
Certificate of Public
Convenience and Necessity

ISSUE DATE: May 20, 1991
DOCKET NO. P-3007/NA-89-76
ORDER AFTER RECONSIDERATION

PROCEDURAL HISTORY

I. January 10, 1991 Authority Order

On January 10, 1991, the Commission issued its ORDER GRANTING CERTIFICATE OF AUTHORITY TO PROVIDE EQUAL ACCESS SERVICE in this matter approving MIEAC's application subject to certain conditions and including a full recitation of the procedural history of the matter prior to the January 10 Order.

On January 22, 1991, U S West Communications, Inc. (USWC) filed a Brief in Support of Motion for Reconsideration and Clarification of the January 10 Order.

On January 30, 1991, the Minnesota Independent Equal Access Corporation (MIEAC) filed its Petition for Amendment of the Final Order and the Minnesota Department of Public Service (the Department) filed its Petition for Reconsideration and Clarification.

On February 1, 1991, AT&T Communications of the Midwest (AT&T) filed its Request for Clarification and USWC filed Supplemental Attachments to Motion for Reconsideration and Clarification.

On February 4, 1991, MIEAC filed its Reply to USWC's Request for Reconsideration and MCI Telecommunications Corporation (MCI) filed its Response to Petitions for Reconsideration and Clarifications.

On February 11, 1991, MIEAC filed its Reply to AT&T's and the Department's Requests for Reconsideration, the Department filed its Reply to MIEAC's Petition for Amendment of the Final Order and USWC filed its Reply to Petitions for Reconsideration and Clarification.

On February 14, 1991, MIEAC filed a Reply to USWC's Second Motion for Reconsideration.

On March 20, 1991, the Commission met to reconsider its January 10, 1991 Order in this matter.

II. March 13, 1991 Participation Issues Order

On March 13, 1991, the Commission issued its ORDER REQUIRING U S WEST COMMUNICATIONS, INC. TO APPEAR ON CUSTOMER BALLOTS, REQUIRING PRIOR AUTHORIZATION BEFORE DISCONTINUANCE OF TOLL SERVICE, AND ESTABLISHING A SCHEDULE FOR FURTHER FILINGS. The Order included a recitation of the procedural history leading to the issuance of the March 13 Order.

On March 25, 1991, USWC filed its Request for Reconsideration of Order Requiring Appearance on All PILEC ballots.

On April 2, 1991, USWC filed its Brief in Support of its Request for Reconsideration.

On April 12, 1991, MCI and AT&T filed their reply comments to USWC's Request for Reconsideration and on April 15, 1991, MIEAC and the Department filed their reply comments to USWC's Request for Reconsideration.

On May 15, 1991, the Commission met to reconsider its March 13, 1991 Order in this matter.

FINDINGS AND CONCLUSIONS

I. January 10, 1991 Authority Order

A. Procedural Issue

On February 1, 1991, USWC filed what it styled as "supplemental attachments" to the motion for reconsideration and clarification of the Commission's January 10, 1991 Order that it had filed on January 22, 1991. MIEAC disputes USWC's characterization of the filing arguing that it was in reality a second motion for reconsideration filed after the time had expired for filing motions for reconsideration and as such should be dismissed. Although there is merit to MIEAC's view and the Commission could dismiss USWC's filing as an untimely filed motion for reconsideration, the Commission chooses to deny the relief requested by USWC in this filing on its merits.

USWC requests that the Commission take official notice of 1) a document publicly filed with state agencies, 2) several statements contained within that document, and 3) several facts

that USWC indicated were "clear," should be understood about those statements or should be inferred from those statements. According to USWC, the Commission is authorized to take official notice of these facts by Minn. Stat. § 14.60, subd. 4 (1990).

The Commission need not determine whether these are the kind of facts that are the proper subject of official notice. Even assuming that these facts were within the scope of official notice, the Commission would not be inclined to exercise its discretion to take official notice of these facts. Drawing inferences from portions of documents filed with another state agency for a purpose not within the Commission's expertise without examining the entire text and context of MIEAC's filing is not a responsible way to proceed. Moreover, MIEAC has persuasively shown that other portions of the document from which USWC quotes conflict with or render ambiguous the passages cited by USWC. In such circumstances, the Commission will exercise its discretion to decline to take official notice as requested by USWC.

B. Reconsideration Issues

1. The Applicable Legal Standard

In its January 10 Order, the Commission found that MIEAC's proposal would be evaluated pursuant to Minn. Stat. § 237.16, subd. 4 (1990). USWC has requested that the Commission reconsider this finding and evaluate the proposal pursuant to Subdivision 5 of that statute. The Commission will decline to do so. The plain language of Minn. Stat. § 237.16 (1990), subd. 5 applies to the revocation of a telephone company's certificate of territorial authority. In its January 10 Order, the Commission noted that USWC had no certificate of territorial authority to provide switched access service (local transport and switching) in any exchange where MIEAC seeks authority and, hence, correctly found Subdivision 5 inapplicable.

In its request for reconsideration, USWC correctly noted that the Minnesota Court of Appeals has extended the application of Subdivision 5 to revocations of intraLATA toll carrier authority. In Petition of New Ulm Telecom, Inc., 399 N.W.2d 111 (Minn. App. 1987), the Court of Appeals held that absent a finding of inadequate service under Subdivision 5, Northwestern Bell Telephone Company (NWB) would be allowed to retain its authority to serve toll customers in the New Ulm area and the New Ulm Toll Project's (NUTP) request to replace NWB as the designated "1+ dialing" carrier was properly denied. However, the expansion of Subdivision 5 noted by USWC does not reach MIEAC's application for three basic reasons.

First, unlike New Ulm, where the service in question was a long

distance service, the service here (switched access service) has been designated a local service. Authority to provide local services is granted exclusively through a certificate of territorial authority.

Second, unlike the applicant in New Ulm, MIEAC is not requesting that the Commission revoke USWC's authority to provide local switched access service in the PILEC exchanges. After the Commission grants authority to MIEAC to provide switched access service, USWC has the same authority to provide this service in ILEC exchanges that it previously had, i.e. the authority to provide switched access service in ILEC exchanges as requested by and under arrangements with ILECs. Whether USWC will actually continue to provide this service is an entirely separate matter. Third, in the New Ulm situation, NWB had a particular Commission granted status or authority. It had been designated by the Commission as the "1+ dialing carrier" for the New Ulm exchange. By contrast in the instant case, USWC's status as the provider of switched access service to the ILECs is not by Commission designation, but relies solely upon the will of the ILECs to continue USWC in that role. The party with the authority to provide switched access service within an ILEC exchange is the ILEC. An ILEC has always been free to convert its end-office and provide its subscribers with access service by itself without having to show that USWC's provision of switched access service was inadequate.

Contrary to the purpose that USWC would have it serve, the New Ulm decision actually reinforces the correctness of the Commission's choice of Subdivision 4 to govern MIEAC's application. Even though NWB was New Ulm's designated 1+ dialing carrier, the Court of Appeals found that it was proper for the Commission to evaluate NUTP's proposal to provide inter-exchange toll service in the New Ulm exchange pursuant to Subdivision 4. The Court further found that, upon a finding that the NUTP's proposal would serve the public convenience and necessity, it was proper for the Commission to grant the NUTP a certificate of authority to provide that service in competition with the designated 1+ dialing carrier, NWB. This is exactly the standard and process that the Commission applied to MIEAC's application.

2. Weighing the Public Interest Factors

In the January 10 Order, the Commission evaluated the MIEAC proposal in light of seven public interest factors and concluded that, as modified by certain specified conditions, MIEAC's system of providing CEA was consistent with the public interest and would be, hence, approved.

In its request for reconsideration, USWC disputed the Commission's findings with respect to several of the seven public interest factors: public need, advancement of public policy

objectives, and level of competition. In addition, USWC argued that the Commission drew the incorrect conclusion from its evaluation of MIEAC's proposal and should have found that the evaluation showed that MIEAC had not met the public convenience and necessity standard of Minn. Stat. § 237.16, subd. 4.

The Commission has reviewed USWC's arguments on this point and finds no reason to alter the conclusion it reached in the January 10 Order that, as conditioned, MIEAC's proposal is consistent with the public interest.

3. Conditions

a. MIEAC-PILEC Contract Length

In the January 10 Order, the Commission authorized MIEAC to sign contracts with PILECs that would require PILECs to contractually obligate themselves to purchase MIEAC's CEA service for a minimum period of three years. No maximum limit was placed on the length of the contracts. However, the Commission also required MIEAC to place in its contracts a clause acknowledging that the Commission may modify or abrogate the length of the contract if the Commission later decided to order the PILEC to honor a bona fide request from an interexchange carrier (IXC) for that PILEC to convert its end office.

USWC and the Department argue that a three year minimum contract is not a condition at all and authorizes MIEAC to bind the PILECs indefinitely. USWC requested a one (1) year maximum contract length. The Department requested a three (3) year maximum contract length but indicated that it would accept a five year maximum that MIEAC had originally proposed.

The Commission has had two concerns that it attempts to balance in this issue. The Commission wishes to allow MIEAC to form contracts of sufficient length to enable it to attract the requisite capital. At the same time, the Commission seeks to prevent MIEAC from impeding the evolution of the Minnesota telephone network to a more sophisticated level through end office conversion by binding PILECs into its system by contract for an unreasonably long time. On reconsideration, the Commission finds that it would be more consistent with both of these goals to establish three years as both the minimum and maximum length of MIEAC's initial contracts. Any renewals of such a contract would be limited to one (1) year extensions. The requirement that the contracts contain a clause acknowledging that the Commission may modify or abrogate the length of the contract if the Commission later decided to order the PILEC to honor a bona fide request from an interexchange carrier (IXC) for that PILEC to convert its end office remains unchanged.

b. Specific Services Authorized

1. Prohibition on Providing Services in the Twin Cities Metropolitan Area

USWC requested that the prohibition against MIEAC providing local services in LEC exchanges in the Twin Cities metropolitan area should be strengthened. USWC made two suggestions. First, the Commission should clarify that the prohibition applies to MEAFCO, MIIC, MEANS or any other company affiliated with MIEAC. Second, the Commission should prohibit MIEAC and its affiliates from indirectly accomplishing the same result by providing any facilities to be used in conjunction with the provision of local services.

It is the Commission's intention that MIEAC's operation of its CEA system not be an occasion for any provision of local service in competition with Twin Cities metropolitan area LECs. To eliminate any confusion on this issue, the Commission will clarify the January 10 Order to indicate that MEAFCO, MIIC, MEANS or any other MIEAC affiliate are prohibited from directly or indirectly providing any services not specifically authorized in the Order, including any local services, in LEC exchanges in the Twin Cities metropolitan area. In the future, should MIEAC, MEAFCO, MIIC, MEANS or any affiliate wish to provide local services in the Twin Cities metropolitan area, the appropriate regulatory requirements would have to be met.

2. Provision of Services to PILECs to Enable the Offering of Advanced Services

MIEAC requested that the January 10 Order be amended to authorize it to make available to PILECs "services which will enable [PILECs] to provide services to their local subscribers". MIEAC stated that its proposed amendment would allow new services to be offered promptly while preserving the Commission's right to prior approval and ongoing supervision of rates, terms, and conditions of service. MIEAC asserted that failure to adopt the amendment would be unreasonable and discriminatory.

MIEAC would like to receive general authority to provide unspecified services. MIEAC does not identify these services and does not describe them beyond the catch-all phrase that they would "enable [PILECs] to provide services to their local subscribers...." The Commission has an established practice of authorizing only such services as are specifically brought before it for approval defined in sufficient detail to allow the Commission to evaluate them. Such a policy ensures that the Commission is not deciding things in a vacuum. If MIEAC wishes to offer services in addition to those authorized under the January 10 Order, MIEAC may request such authority from the Commission and the Commission will consider it at that time. For the reasons stated, such treatment is neither unreasonable nor discriminatory.

c. Rate Issues

1. Procedure for Determining Rates

In the January 10 Order, the Commission deferred setting final rates for MIEAC's services and conditioned its approval of MIEAC's application upon MIEAC making a true-up filing when its costs are known. To assist its analysis of MIEAC's rates, the Commission ordered MIEAC to file certain information and materials as part of its true-up filing, including 1989 minutes of use data.

USWC requested that the Commission modify its Order to require MIEAC to file minutes of use data from the calendar year preceding its true-up filing. USWC noted that if the true-up filing is made in late 1991, the 1989 minute of use data will be almost two years old.

To anticipate the potential problem that USWC has identified, the Commission will clarify that MIEAC must file minutes of use data from the calendar year preceding its true-up filing.

2. Rates for FG-A and FG-B Access

The last sentence at page 21 of the January 10 Order states: "Therefore, under this Certificate of Authority, MIEAC will be permitted to charge premium access rates at this time."

USWC correctly notes that ILECs, not MIEAC, currently charge IXCs access charges. To clarify the Order, therefore, the sentence quoted and the one immediately following it should be replaced with the following: "Therefore, PILECs will be permitted to charge premium access rates at this time. If the FCC reconsiders its decision and determines that a premium access charge is inappropriate, however, the Commission will by further Order require the PILECs to justify charging premium rates."

3. Rates Where AT&T is the Sole Carrier

In the January 10 Order, the Commission found that in PILEC exchanges where no competition to AT&T appears, the customers who currently have AT&T as their interLATA carrier will receive no benefits of competition and no better service after MIEAC. The Commission concluded that, in such circumstances, MIEAC will be prohibited from imposing its surcharge upon AT&T's interLATA traffic from such exchanges.

The Department suggested that the Order be expanded to provide that where USWC is the only IXC on the PILEC intraLATA ballot in an exchange, USWC should not have to pay MIEAC's CEA rate. USWC requested that the Commission amend its Order to prohibit MIEAC from imposing its surcharge on USWC in exchanges where USWC is the only IXC besides MIIC on the intraLATA ballot.

For the same rationale adopted with respect to AT&T, the Commission agrees that where USWC is the only IXC on the intraLATA ballot, USWC should not have to pay MIEAC's CEA rate and the January 10 Order is modified to reflect that. The Commission is not prepared to conclude at this time, however, as USWC requests, that MIIC will be so insubstantial a competitor that USWC should not have to pay MIEAC's surcharge if MIIC is the only other IXC on the intraLATA ballot.

d. Terminating Monopoly

In the January 10 Order, the Commission prohibited MIEAC and its affiliates and the PILECs from establishing a terminating monopoly by any current or future service or technology. The Commission required that MIEAC's contracts with the PILECs prohibit the PILECs from establishing a terminating monopoly.

USWC requested that the Commission amend its Order to establish penalties to be imposed on MIEAC and/or the PILECs for violation of the anti-terminating monopoly contract provisions.

The Commission finds that it would be premature to state what remedies it would order in response to violation of these contract provisions. The Commission finds that its Order clearly delineates the prohibited behavior and further finds that determination of penalties can be best determined when the specific facts of a violation are before the Commission.

e. The Routing of FG-B Traffic

The Commission's January 10 Order required MIEAC to allow FG-B traffic to use the existing network and prohibited it from imposing the MIEAC charge on this traffic. The Order also prohibited MIEAC from assessing its access charge where FG-B traffic is routed to MIEAC's centralized switch over the same circuits as toll traffic due to end office technical limitations.

MIEAC requested clarification of two issues. First, MIEAC asked that the Order be revised to indicate that when a FG-B carrier obtains FG-B traffic at the MIEAC access tandem MIEAC should be allowed to charge the FG-B carrier the same rate it charges FG-D carriers that receive traffic at the MIEAC access tandem. Second, MIEAC suggested that instead of requiring the establishment of separate trunking of FG-B traffic to the USWC access tandem from ILEC digital end offices, the Order should require MIEAC to deliver such FG-B traffic to the adjacent access tandems (toll transfer points or TTPs) without charge to the FG-B carrier.

The Commission finds that clarification of the first issue only is required. Where an IXC need not route its FG-B traffic over MIEAC's network but the IXC chooses to do so and receives its FG-B traffic at the MIEAC tandem, MIEAC should be allowed to charge the IXC for switching and transport. Whether MIEAC

establishes an access tandem switching charge separate from its CEA charge or only charges for transport, the rate charged to the FG-B carrier would be different from the rate charged to FG-D carriers which receive traffic at the MIEAC access tandem. The Commission will require MIEAC to provide cost support for these rate elements in its true-up filing.

f. Bona Fide Requests for End Office Conversion

In its January Order, the Commission declined to adopt the Federal Communication Commission (FCC) policy that, if an ILEC offers equal access through CEA, the ILEC need not comply with an IXC's request that it convert its end office. Instead, the Commission determined that it would examine bona fide requests for end office conversion as they occur and determine on a case-by-case basis whether to require the PILEC to comply with the request.

USWC requested that the Commission clarify the January 10 Order on this issue in four respects: first, that the three year period to respond to a bona fide request (BFR) begins from the date of the request rather than from the date of any Commission Order requiring compliance with the BFR; second, that the Commission will examine BFRs for end office conversions of non-electronic end-offices; third, that upon conversion of a PILEC end office the IXCs serving the PILEC will be able to choose to serve the PILEC by establishing a direct connection to the PILEC, by connecting to the USWC access tandem or by connecting to MIEAC's access tandem; and fourth, that in analyzing any BFR made to PILECs the financial viability of MIEAC will not be a consideration.

The Commission will grant USWC's first three requested clarifications. Counting the three years from the date of the BFR will synchronize with the FCC's practice in this regard. Stating that it will review BFRs to convert non-electronic end-offices will place the parties on notice that the Commission's policy differs from the FCC's on this point. Clarifying that IXCs will have a choice of interconnecting at the end office, at the MIEAC tandem or at the USWC access tandems following an end office conversion to equal access is consistent with the Commission's statements that the provision of end office equal access capability is preferable to MIEAC's CEA system. This clarification will be made now rather than waiting until a specific dispute is presented for resolution so that IXCs may be aware of their options before filing a request for end office conversion.

The Commission does not accept USWC's fourth proposed clarification. In advance of a specific case, the Commission sees no reason to pre-empt itself from considering the impact of end office conversion on MIEAC's financial viability. When the issue arises in a specific context, the Commission will determine whether this is a relevant factor and determine what weight to give to this consideration.

g. Maintenance of Existing Local Transport Arrangements

In its January 10 Order, the Commission found that the issue of PILECs bypassing USWC's local transport facilities and connecting directly to MIEAC was not ripe for a decision because no actual bypass proposal was before the Commission. To guard against bypasses occurring without prior Commission review, the Order required MIEAC to include in its contracts with PILECs a provision prohibiting PILECs from effecting such a bypass without first securing Commission review and approval.

MIEAC proposed elimination of the requirement that all bypass proposals secure prior Commission approval. AT&T requested clarification that the prior approval requirement be limited to construction of new transport facilities in connection with the MIEAC project. USWC requested that the Commission inhibit bypass even further by prohibiting the bypass of terminating facilities completely and allowing PILECs to seek Commission approval of bypass of originating local transport facilities only. In addition, USWC requested that the Commission's Order be amended to establish penalties for breach of the provisions regarding bypass of local transport facilities.

MIEAC has not refuted the reasons or allayed the concerns that led the Commission to adopt the requirement that plans to bypass existing facilities obtain prior Commission approval. USWC has not shown grounds for the Commission to prohibit all bypass of existing terminating facilities at this time nor has it shown the necessity or appropriateness of stating in the Order what the penalties for failing to secure prior Commission approval before implementing a bypass would be. Therefore, the Commission will not modify its Order as requested by MIEAC and USWC. However, in the interest of administrative efficiency, the Commission will amend its Order to require MIEAC to include in its contracts with PILECs a provision that prohibits PILECs from affecting a bypass of existing local transport facilities to reach MIEAC or a MIEAC affiliate without first securing Commission approval unless all affected telephone companies, including USWC, agree to such bypass.

Finally, the Commission finds that its Order is reasonably clear on the scope of the prior approval requirement and finds no need to clarify it further. If AT&T believes that USWC is inappropriately interfering with AT&T's business by misciting that Order, it can bring the matter before the Commission on complaint pursuant to Minn. Stat. § 237.081 (1990).

h. Accounting and Reporting Requirements

In the January 10 Order, the Commission required MIEAC to provide a 60 day notice before beginning an unregulated activity which will produce less than 2% of MIEAC's existing revenue and a 120 day notice if the activity will produce more than 2% of existing revenue.

MIEAC asserts that these notice requirements are unreasonably long. MIEAC notes that existing telephone companies can offer noncompetitive and emerging competitive services after giving a 10 day notice and argues that it should not be subject to significantly greater restrictions when it proposes unregulated services than other telephone companies that offer regulated services. MIEAC requested that the Order be amended to require a notice 10 days prior to offering unregulated services and that notice be required only if the unregulated service produced revenues in excess of 5% of MIEAC's current revenues.

In light of MIEAC's current revenue requirement and two additional safeguards to be added by this Order, the Commission finds that adopting the 5% threshold proposed by MIEAC is adequate to protect the ratepayers. The additional safeguards are that MIEAC will be required to give the Commission and the Department written notice of every unregulated activity whose projected revenue is less than 5% of its current regulated revenue and will be required to describe all its unregulated activities during the prior year as part of its annual report.

The Commission's need for adequate prior notice of unregulated activity, however, cannot be met during the 10 day period requested by MIEAC. Unlike the FCC, the Commission cannot correct for improper allocation of costs between regulated and unregulated services except on a going forward basis. An adequate notice requirement is necessary to allow the Commission to consider making rate changes for MIEAC's regulated services prior to MIEAC offering unregulated services and to promptly adjust rates to recognize cost allocation changes. On reconsideration, however, the Commission finds that 90 days rather than 120 days is adequate advance notice for these purposes. A 90 day prior notice requirement will not impede MIEAC's introduction of unregulated services but will merely need to be incorporated into its implementation plans.

i. Viability of MIEAC's Alternate IXC, MIIC

In the January 10 Order, the Commission conditioned MIEAC's certificate on MIEAC providing in its true-up filing sufficient information to satisfy the Commission that MIIC could provide timely service as an IXC and participate in a balloting and allocation process. The deadline established for the true-up filing is October 10, 1991.

MIEAC requested that the Order be modified to separate the MIIC ability to serve filing from the true-up filing. MIEAC noted that MIIC is obligated to serve only in exchanges where there is not an alternative to USWC on the intraLATA ballot or AT&T on the interLATA ballot. MIEAC argued that it would be unreasonable to require MIEAC to bring MIIC up to an operational level before it is known whether MIIC will be required to serve at all.

USWC requested that the Commission amend its January 10 Order to condition MIEAC's certificate on MIIC participating in sufficient exchanges and sufficient geographic areas of the state for MIIC to establish viable rates and act as a viable competitor to USWC. USWC observed that if MIIC operates only in those exchanges where other IXC's find it too expensive to operate, MIIC's rates will be so high it will be unable to provide viable competition.

The Commission will modify its Order to require MIEAC to file MIIC viability information within thirty (30) days of learning that any PILEC exchange will not have at least two intraLATA and two interLATA carriers that will participate in balloting. No purpose is served by requiring MIEAC to establish MIIC's viability if MIIC will not be required to serve. MIEAC has assured the Commission that upon learning that MIIC's service will actually be required there will be adequate time to develop MIIC into a viable carrier.

USWC's concern that MIIC's rates will not be low enough to make it a realistic competitor to USWC will be considered when and if the information on MIIC is filed. To clarify the Commission's view of the importance of MIIC's viability, if MIIC is required to serve in any exchange, the Commission will thoroughly review the information filed regarding MIIC and allow interested parties an opportunity to comment. The competitiveness of MIIC's rates will be an item under review at that time. Balloting will not be allowed to go forward until the Commission's review of MIIC is complete.

j. Avoiding Post CEA Conversion Problems

The Commission's January 10 Order required MIEAC to include in its compliance filing its timeline and informational material it intends to provide ILECs, IXCs, and end users for the establishment of CEA. The Commission's intent was to avoid some of the problems that occurred in Iowa in converting to CEA.

USWC requested that the Commission amend its January 10 Order to specifically prohibit inclusion of a "no change" or similar option on the PILEC ballots. MIEAC opposed this specification on the grounds that ballot participation was being decided in a separate proceeding.

Since this Order reflects the Commission's reconsideration of both the ballot participation order and the authority order, it is appropriate to address this issue at this time. To avoid the problems that arose in Iowa on this point, it is appropriate to specify that a "no change" or similar option should not be listed on the ballots and only the names of IXCs providing service in that exchange should be listed. This will require customers to select among the IXCs providing service in the exchange, thereby promoting conscious and informed decision making.

C. Clarification Issues

1. The Compliance Filing Ordered by the Commission

The Commission's Order refers to a compliance filing and later refers to a true-up filing. Although no party appears to have been misled on this point, the Commission clarifies that the two terms refer to the same filing.

2. Findings Regarding End Office Upgrades

The Commission's January 10 Order observes that if MIEAC's system becomes a new status quo that discourages ILECs from providing end office conversion, it may actually impede rural economic development. The Commission also found that if it became the on-going status quo in rural Minnesota, MIEAC's system could perpetuate rather than reduce the rural-urban service gap.

MIEAC objected that the inference that MIEAC's system may reduce or delay end office upgrades is unfounded. USWC stated that the record fully supports the Commission's findings.

The Commission finds that its language regarding the impact of MIEAC's proposal on the upgrading of PILEC end offices is appropriate and need not be clarified.

3. USWC Access Revenues

The Commission's January 10 Order states that due to MIEAC's system, USWC will incur rearrangement costs and lose the revenue that it had received for providing switched access service to PILECs. MIEAC argues that since USWC bundles its costs for providing switching service into its local transport rates and will continue to provide local transport between the ILEC end offices and the TTPs, USWC will continue to recover all its costs through its local transport rates and not experience decreased access revenues due to MIEAC's system. MIEAC requests that the Commission alter its Order to reflect that.

USWC will continue to provide local transport and hence recover the revenue it currently recovers from providing switched access service only if no PILECs bypass the local transport network. Because it is reasonable to assume that the presence of MIEAC will stimulate some bypass of USWC's local transport network, the Commission's conclusion in the January 10 Order is justified and will not be changed.

4. USWC's CEA Service

In the January 10 Order, the Commission found that USWC's 1+ interLATA and 1+ intraLATA centralized equal access service would be of equal quality with the MIEAC centralized equal access service. MIEAC argued that the Commission's finding is inconsistent with other findings in the Order and is unsupported in the record. MIEAC requested that the Order be amended to

state that USWC has not demonstrated that it is able to provide a CEA service comparable in quality to MIEAC's CEA service. The Commission affirms that its findings on this issue are supported by the record and will not be altered.

II. March 13, 1991 Participation Issues Order

USWC states that the grounds for its Request for Reconsideration are as follows:

1. The Commission's Order overlooked material facts including but not limited to the role of balloting in the equal access presubscription process and the difference between ballot participation and service offerings.
2. The Commission's Order erred as a matter of law in its interpretation of Minn. Stat. § 237.60, subd. 3 (1990).
3. The Commission erred in applying Minn. Stat. § 237.60, subd. 3 to the balloting process.
4. The Commission erred in failing to apply Minn. Stat. § 237.60, subd. 3 equally to all interexchange carriers.
5. The Commission erred in its interpretation of the term "service offerings" in Minn. Stat. § 237.60, subd. 3.
6. The Commission's Order establishes a form of monopoly protection for MIEAC that is inappropriate and lacking evidentiary support in the record.

The Commission finds that USWC's petition offers no new evidence and raises no new issues requiring further consideration. In support of its Request for Reconsideration, USWC restates several of the arguments it made prior to the Commission's March 13 Order. The Commission thoroughly examined these issues and USWC's arguments regarding those issues before issuing its March 13 Order and, upon reexamining them and their variations in the context of this deliberation, finds no reason to alter that Order.

ORDER

1. The request by U S West Communications, Inc. (USWC) that the Commission take official notice of certain portions of a December 3, 1990 filing by the Minnesota Equal Access Systems, Inc. (MEANS) with the Minnesota Department of Commerce is denied.
2. The Commission's Order in this matter dated January 10, 1991 is amended and clarified as set forth in this Order.

3. In all other respects, the requests by U S West Communications, Inc. (USWC), the Minnesota Independent Equal Access Corporation (MIEAC), AT&T Communications of the Midwest (AT&T), and the Minnesota Department of Public Service (the Department) for reconsideration, amendment and clarification of the Commission's January 10, 1991 Order are denied.
4. The request by USWC for reconsideration of the Commission's March 13, 1991 Order is denied.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)